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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

FILED

DAVID P. OETTING, individually, and on  
behalf of all others similarly situated;

Plaintiffs,

vs.

HEFFLER, RADETICH & SAITTA, LLP,

Defendant.

Case No. 2:11-cv-04757-JD

FILED

AUG 16 2011

MICHAEL E. KUNZ, Clerk  
By: [Signature] Dep. Clerk

FIRST AMENDED COMPLAINT – CLASS ACTION

COMES NOW Plaintiff David P. Oetting, and the class he seeks to represent, by and through his counsel of record, and files this FIRST AMENDED COMPLAINT, and show as follows:

Plaintiff and the class incorporate by reference and re-allege all allegations as set forth in the Original Complaint (Doc. #1, E.D. Mo. Case No. 4:11-cv-00253) filed on February 8, 2011, as if fully set forth herein.

**Count IV**  
**(Negligence in Supervising Employees)**

51. Heffler examined and calculated all Claim Forms (“claims”) to determine that they were properly completed, signed and documented. Heffler owed a legal duty to plaintiff and the class to accurately perform its review and authorize payment of only valid claims.

52. Heffler assigned its employee, Penta, a senior accountant, with the responsibility for various aspects of the claims process, including reviewing claim documents to determine if a claimant was entitled to recovery and addressing any issues that arose with claimants who had submitted high value claims.

53. When the claim deadline was approaching, Penta arranged for his co-schemers to hand deliver to Penta, and send directly to Penta through overnight mail services, fraudulent claims so that Penta could ensure that the claims were timely processed and approved for payment.

54. Penta personally approved the fraudulent claims or took whatever steps necessary to make sure that other employees at Heffler approved the claims and did not prevent the subsequent payment of the claims.

55. Heffler failed to exercise reasonable care in the supervision of its employees by having inadequate safeguards or checks in place to ensure that the high value claims were reviewed and approved upon initial submission by claimants or upon subsequent distribution of funds or at any relevant time in the process by anyone other than Penta.

56. Heffler failed to exercise reasonable care in having in place inadequate fraud prevention measures and an inadequate additional review process for each claim that was high in value prior to approval for payment.

57. Plaintiff and the class sustained injuries as a result of Heffler's failure to take reasonable precautions to protect Plaintiff and the class.

58. Heffler is liable to Plaintiff and the class for its negligent supervision of its employees.

#### **Prayer**

WHEREFORE, Plaintiff prays that this Court enter judgment as follows:

- A. That after due proceedings, this case be certified as a class action;
- B. That plaintiff and the class members be awarded compensatory damages against the defendant in an amount to be proven at trial, together with both prejudgment and

postjudgment interest as allowed by law under RS Mo. § 408.040.2, punitive damages, costs of attorney's fees afforded by law, where applicable, and all other costs and expenses incurred in bringing this action; and

C. For all other legal or equitable relief as may be proper under the circumstances.

**Jury Demand**

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Frank H. Tomlinson

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MICHAEL E. KUNZ, Clerk  
Dist. Court

/s/ John K. Weston

John K. Weston *w/ permission to*  
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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

Frank H. Tomlinson hereby certifies that the foregoing FIRST AMENDED COMPLAINT has been filed with the Clerk of the United States District Court, Eastern District of Pennsylvania and is available for viewing and downloading from the ECF system. The foregoing document was also served by first class mailing, on the date set forth below and to those persons identified below:

Scott Dickenson, Lathrop & Gage LLP, 10 South Broadway, Suite 1300, St. Louis, MO 63102-1708; James McTigue and Patricia M. Hamill, Conrad, O'Brien, Gellman & Rohn, P.C., 1515 Market Street, 16<sup>th</sup> Floor, Philadelphia, PA 19102.

Dated: August 15, 2011

/s/ *Frank H. Tomlinson*

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